

Canadian
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Alberta has the sovereign right to issue
and use its own credit. Ottawa, 1937.

04309

ALBERTA
HAS
THE SOVEREIGN RIGHT
TO
ISSUE AND USE
ITS OWN CREDIT

A Factual Examination of
the Constitutional Problem

by

R. ROGERS SMITH

OTTAWA
1937



NOTE

The information contained in this booklet was placed before Premier Aberhart and members of his Cabinet by R. Rogers Smith in the Macdonald Hotel, Edmonton, in October, 1935.

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Ottawa

FORWORD

Although the information in this booklet is important to all Provinces and all Canadians, it is vital to the people of Alberta, particularly the elected members, because Alberta elected representatives committed to introduce a Social Credit regime.

Throughout the country Canadians are intently watching Alberta — "Why do they stall?" "Why do they not put Social Credit into effect? They talked enough about it. Is it that they do not know the relationship of Alberta to the Dominion?" These are questions being asked today.

By checking the information in this brochure it can be proved that Alberta has the Sovereign right to issue and use its own credit. If, however, the members do not do this, they can be justly accused by their electors of incompetence or worse. The facts are taken from the Statutes at large, from the Archives, and from original historical sources which are irrefutable.

I desire to express my gratitude to the various constitutional authorities who have assisted me in checking and verifying the facts contained herein.

R. R. S.

Wm. Wray.
Please Return 1636-12th Ave. W.

I — THE ATTEMPT TO FEDERATE THE COLONIES OF BRITISH NORTH AMERICA.

The reason the request of the Colonies to be permitted to form a Federal Union was refused by the Colonial Office in 1867 was because the United States were pressing Great Britain for a settlement of claims for indemnity arising out of the actions of the British Navy during the Civil War, for which Great Britain acknowledged responsibility in the Treaty of Washington. The terms of this Treaty could only be settled by retaining Canada as a Colony.

Great Britain had not only assisted the Confederacy from 1861 to 1865, but had joined in a conspiracy with France, Spain and Austria to divide North America between them. On Oct. 31st, 1861 a convention was held in London attended by delegates from England, France and Spain; they agreed to a joint intervention in Mexican affairs. Emperor Maximilian, brother of Franz Joseph of Austria, was to be placed on the throne of Mexico, Louisiana, which extended at the time from the Gulf of Mexico to the Canadian border, was to be returned to France. The Northern States were to be defeated and returned to England as Colonies. The Confederacy was to be free and retain their slaves.

Great Britain floated the bonds of the Confederacy, the proceeds were used to build the Alabama, Florida, Georgia, the Shenandoah, fast sailing ships and their auxiliaries. These were built in Great Britain and the headquarters of the Confederate Navy was in Liverpool, as all Confederate ports were blockaded. They sank \$15,000,000 worth of United States shipping without taking a prize into an Admiralty Court, and without firing a shot at an armed enemy.

Great Britain also spent \$5,000,000 on her own navy, and at the time of the Trent affair embarked 8000 troops for Canada to attack Lincoln from Toronto.

The Spanish fleet, at the time in Cuban waters, arrived to invest Vera Cruz Dec. 14th, 1861. The British and French fleets arriving Jan. 6th and 7th of 1862. France supplied 30,000 troops for this campaign.

The Czar of Russia takes a Hand

Still smarting from the Crimean War 1854-1856, the Czar, to disrupt the scheme of the European Allies, sent his powerful Baltic squadron to New York harbor and his Pacific squadron to San Francisco. His action had the desired effect. Great Britain and Spain withdrew their fleets from Vera Cruz leaving the burden of supporting Emperor Maximilian entirely to France. He was eventually taken prisoner and with two of his Generals, court-martialled and shot.

When Lincoln won the Civil War, France was informed in plain terms "that the United States would not tolerate a French force or the existence of any foreign Monarchy in Mexico". On Jan. 14th, 1866, Napoleon ordered his General in Mexico to withdraw the troops.

**Speech in Ottawa at Session of 1865 by the
Hon. John A. Macdonald on terms of Treaty
of Washington**

In a four and a half hour speech in Ottawa the Hon. John A. Macdonald told the House that he was notified by a statesman in the United States that if satisfactory terms could not be agreed upon it meant war between the United States and Great Britain. In that event naturally Canada would be invaded.

During these eventful and hectic times our delegates arranged to leave Canada July 30th, 1866, to take the Quebec Resolutions to London; these Resolutions, which were for a Federal Union, were to be returned to the people for their ratification (see Section 70). We were to have a government of the Canadian people.

Tilly, Tupper, Archibald and the Maritime delegates left as arranged, Tilly to be chairman. The Hon. John A. Macdonald wrote him on the eve of his departure:

“... On no account change any of the provisions of the Resolutions for if you do it may mean an entire re-opening of the negotiations with the Provinces and the consequent disruption of our plans”

The Hon. John wrote the letter because he was unavoidably detained. Armed parties of men from the United States had invaded Ontario, citizens were enlisted to repel the raids. They were not driven out, however, until \$8,000,000 of damage was done to the Province of Ontario.

The United States were pressing for a settlement of the claims against Great Britain, and an unofficial agreement had been reached on the terms of the Treaty of Washington, before the Hon. John could leave Canada, which he did the latter part of November. Our delegates in London had been unsuccessful in their attempt to bring the Quebec Resolutions to the attention of Parliament, and were cooling their heels in London waiting for him. On arrival he immediately convened the delegates in the Westminster Palace Hotel Dec. 4th, 1866, where they sat until Dec. 24th drafting the “Kingdom of Canada” draft of the Bill. Each delegate signed a separate copy; these are carefully preserved in the Archives at Ottawa.

A draft was sent to Lord Carnarvon, Secy. of State for the Colonies by the Hon. John, Dec. 26th, 1866 and he had a reply dated the 28th, stating that the draft was being sent to the printers to be printed. This draft of the Bill which contains the following repealing clause, was rejected by the Colonial Office:

“From and after the Union, all Acts and parts of Acts, passed by the Parliament of Great Britain, the Parliament of the United Kingdom of Great Britain and Ireland, the legislature of Upper Canada, the legislature of Lower Canada, the legislature of Nova Scotia or the Legislature of New Brunswick which are repugnant to or inconsistent with the Provisions of this Act shall be and the same are hereby repealed”.

It is not difficult to understand why the Colonial Office, objected to Canada's request for self-government. It would have been a suicidal policy on the part of Great Britain to grant the Provinces of Canada the right to create a Federal Union. It was imperative for the best interest of Great Britain that Canada be retained as a Colony, so that they could settle the terms they had tentatively agreed to in the Treaty of Washington.

In a pamphlet entitled the Balance Sheet of the Washington Treaty, 1871, a copy of which is in the Parliamentary Library at Ottawa, Viscount Bury, the author and a member of the Imperial Parliament, frankly tells us that the interests of Canada were sacrificed to make peace between England and the United States; England agreed to —

1. Pay £3,500,000 in settlement of the claims for shipping sunk (the Alabama claims).
2. National Expression of regret (an apology).
3. Canadian loan £2,500,000.
4. Settle claims arising out of the War.
5. To cession of territorial rights in perpetuity.
6. To cession in perpetuity of joint navigation of the St. Lawrence.
7. To cession of indemnity for "Fenian raids" \$8,000,000.
8. To equal rights with British subjects of fishing rights in Newfoundland and Nova Scotia.

An arbitration board was set up and final payment made by Great Britain at Geneva by payment of £3,229,000, in 1872.

The United States, allowed certain sums for the disputed boundaries, which should have been credited or paid by Great Britain to Canada as well as the indemnity for the "Fenian Raids" \$8,000,000 which is still owing to the Province of Ontario.

Had the Colonial Office granted our request for a Federal Union, the Imperial Parliament would have had nothing to barter with in their settlement with the United States; as well as the possibility that after creating a Federal Union, Canada would join with the United States, which at the time was considered an enemy.

The status of Canada has since been changed by an Act of the Imperial Parliament, the Statute of Westminster, Dec. 11th, 1931, Section 11 of the Act states that Canada is no longer to be considered as a "Colony", and recognizes Canada as an equal with Great Britain as a member of the British Commonwealth of Nations.

II — HOW DID WE GET THE B. N. A. ACT, 1867?

In a communication dated Dec. 28th, 1866, Lord Carnarvon acknowledged receipt of the draft of the "Bill" submitted by the Hon. John A. Macdonald, Chairman of the Canadian delegates; and told him that he was sending the draft to the **printers to be printed.**

This was done, as we have in the Archives at Ottawa printed copies of this draft. Each delegate from Canada signed his own copy.

The British North America Act passed the second reading of the House of Commons, without being printed — (See Hansard February 26th, 1867.)

Between Dec. 28th and Feb. 9th following; we are informed by Sir Frederic Rogers, Under-Secretary of State for the Colonies:—"They held

many meetings at which I was always present: Lord Carnarvon was in the chair, and I was rather disappointed in his power of presidency. I had always believed — and the belief has so consolidated itself that I can hardly realize the possibility of anyone thinking the contrary — that the destiny of our Colonies is independence, and that in this view the functions of the Colonial Office is, to secure that our connection, while it lasts, shall be profitable to both parties and our separation, when it comes, as amicable as possible. This opinion is founded, first, on the general principle that a spirited Nation — and a Colony becomes a Nation — will not submit to be governed in its internal affairs by a distant government, and that nations geographically remote have no such common interests that will bind them permanently together in foreign policy, with all its details and mutations.”

The minutes of the meetings at which the British North America Act was drafted have never been made public.

Referring to Hansard we find that the “Bill” was introduced by Lord Carnarvon to the House of Lords February 9th, 1867, in the following words:—

“The Bill opens by reciting the desire of the several provinces to be Federally United”.

The actual words of the Preamble are:—

“By reason of the request of the Colonies for Federal Government. It is expedient therefore that they have Laws and Regulations to guide them.”

Lord Campbell, leader of the opposition in the House of Lords, in opening his speech at the second reading of the “Bill” February 26th, 1867 said:

“The ‘Bill’ is founded I believe on what is termed the Quebec scheme of 1864 — Our lights, indeed may be imperfect upon this part of the subject, and I will not dwell upon it — but one thing is clear the preamble of the Resolution comes before us in clear and perfect authenticity.”

There is no reason to doubt that the House of Lords believed they were enacting a measure that would permit the Provinces to form a Federal Union.

The page which sets forth the enunciation of the motives for which the measure was enacted is not a part of the printed copies of the Act received in Canada. Instead of this we have a substitution — “Whereas the Provinces of Canada, Nova Scotia and New Brunswick have expressed their desire to be Federally United into one Dominion.” This is not a true statement and is discussed under the heading “What is the B.N.A. Act?”

Let us now hear what the Privy Council has to say:—

Lord Watson (Chairman of the Privy Council Maritime Bank case (1892) A. C. 441) recognizes the **object** or *raison d’être* of the measure, as stated in the preamble, as most important:—

“The object of the Act was . . . to create a Federal Union . . . entrusted with the exclusive administration of affairs in which they had a common interest, each Province retaining its independence and autonomy”.

The object of the Act supersedes in importance any subsequent section. Why was the page which contains this deleted from the printed copies circulated in Canada? It was to twist the measure so that Canada should be retained as a Colony.

“British North America” Bill Enacted, 1867.

After passing the House of Lords, it was taken to the Commons, Feb'y. 26th, 1867. The debate there centered around the appropriation to the Inter-colonial Railway. The purpose of the Act was not discussed. It evidently was assumed that this had been debated in the Lords. One member asked the Government “Why all the haste in enacting the measure? I am not sure I will have anything against it, but it affects four million people, and we should have an opportunity to study the measure, which is now in second reading, and **it has not been printed.**” After passing the Commons it received the assent of Queen Victoria March 29th, 1867, to become effective in Canada July 1st, 1867.

Strenuous opposition was expressed by Nova Scotia. A protest against the Act was signed by 30,000 people, and in the election of May, Dr. Tupper's government was defeated. In a house of 38 members, Stewart Campbell of Guysboro County and Dr. Tupper were the only two returned. Tupper resigned. Joseph Howe and eight members were delegated to place a petition before the Imperial Parliament “That Nova Scotia be relieved of this measure, or a Royal Commission of inquiry be appointed”. Dr. Tupper, a life-long political enemy of Howe, followed him to London, and going to his hotel said “Nothing that I can say will deter you from placing your petition before Parliament, but they will not grant your request. When they refuse, come back to Canada and take a Cabinet seat at Ottawa, and we will do the best we can with what we got”.

Howe was dumbfounded, for he previously had thought that Tupper, who was one of the delegates to London dealing with the Quebec Resolutions, was partly responsible for the drafting of the British North America Act. He induced John Bright to place the petition before Parliament. It was, as Dr. Tupper predicted, defeated the vote being 183 to 87. Nova Scotia was compelled against her wish to become a Member of the Dominion.

In a speech on leaving London, Howe said:—

“We go home to share the perils of our native Land, in whose service we consider it an honor to labor and whose fortunes in this darkest hour of her history it would be cowardice to desert”.

III — WHAT IS THE BRITISH NORTH AMERICA ACT?

The British North America Act is not, and has never been, legal and valid as the Constitution of Canada. Canada has no constitution. See page 16

The “Act” is a “Private Bill” conceived and drafted by the Colonial Office and enacted into a Statute by the Imperial Parliament, uniting four colonies of North America into One Colony. Sewall
XCL. 10
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Last year (1936) the Imperial Parliament enacted a “Bill” amending the Constitution of the island of Malta, a Colony in the Mediterranean. Students of law recognize this Act as a “Private Bill” in relation to the Empire, as it affected only Malta. The British North America Act is placed in the same category as it affected only Canada. A private Bill must always have a preamble, the recitals of which must be proved. This is a substantive enunciation of the motives which impelled the Parliament to enact the Statute. It is the most important part of the Act, superseding in importance any of the subsequent sections. The Act must be read and construed as a whole although one section may bear a wider and another a more limited meaning.

The Governor General is the Government, with power to appoint a Council to "aid and advise" him, or he can remove them from office at his discretion. The custody of the Great Seal is granted to him, the power to appoint Judges, Justices of the Peace, Commissioners, Deputies of himself, Lieut. Governors of the Provinces, and Members of the Senate. He can remove any person from office exercising any official power in our Dominion, including the Premier of Canada, and the Speaker of the Senate.

Insofar as the Provinces are concerned he takes the place of "the Queen and a Secretary of State". In other words, any legislation of the Legislatures of the Provinces can be "disallowed" by him; further, the Provinces can not refer any legislation so disallowed to the Imperial Parliament, or the Crown.

There Was No Confederation.

There is nothing in the historical record which can be cited to support the story of Confederation. There is nothing in the "Act", to alter in any essential respect the Colonial relationship, or to weaken the Crown's headship; nor is there anything in the "Act" to indicate a surrender in any degree of that fundamental principle of the British Government: the full legislative and executive power to govern over and throughout the British Empire.

An examination of the historical record shows that fraud was recorded in at least four instances in relation to its enactment. This is not sufficient to remove the Statute. Fraud must be proven "from the wording of the Act itself and the manner in which the words are used". This is the law in relation to Statutes.

Is the British North America Act fraudulent, from the words and the manner in which the words are used? It is.

A Federal Union must be "free and Sovereign", whereas a colony must be "subservient". No country could be both at the same time. The words are opposite in their meaning. There is no power in heaven or earth that can pass a law to arbitrarily create a Federal Union. It must be a mutual agreement between those adopting their Constitution. NO AGREEMENT OF ANY KIND HAS EVER BEEN SIGNED BETWEEN THE PROVINCES OF CANADA.

As an enunciation of motives actuating the Parliament to enact the Statute; the words "Federally United into One Dominion", and the manner in which the words are used **constitutes fraud** and brands the British North America Act as a fraudulent measure. It is impossible to be Federally United and a Dominion at the same time.

Search for Certified Copy of the Act.

My researches on this subject led me to Ottawa, where I examined the documents in the Archives; these, the "Quebec Resolutions" and the "Kingdom of Canada" draft of a "Bill" (both drafted by our Canadian representatives) are carefully preserved. I desire to publicly thank Colonel Hamilton, custodian of the records, for his assistance.

At my request to be shown a "certified" copy of the B.N.A. Act, he regretted that he had no such copy in the records, but obligingly arranged an appointment for me with M. Lemaire, Clerk of the Privy Council. Not having this document, Mr. Lemaire instructed his secretary to conduct me to

the Governor General's Office, where I was presented to Mr. Pereira, Chief Secretary.

Not finding this "Act" Mr. Pereira handed me a note for Mr. Hardy, Parliamentary Librarian. At the library I was informed that this was a very valuable document and no doubt I would find it in the Office of the Secretary of State. Mr. Coleman, the Under-Secretary, delegated three of his assistants to search the premises. Not being able to find it there, Mr. Coleman directed me to Dr. Beausnesne, Clerk of the House of Commons. "Why would 'I' have it?" was the Doctor's reply to my request. "No documents are kept here, but you had better see Mr. Blount, Clerk of the Senate. He has a vault where important papers are under lock and key".

Mr. Blount informed me, however, that he did not know of it, but would open the vault if I would care to look. We descended, with an assistant, to a room below the Senate Chamber, and with the aid of a step-ladder lowered two large cases marked 1867 and 1868.

Not finding the "Certified" copy which is presumedly the Charter of the Dominion Government, I suggested that it might have been destroyed in the fire which burned the main building in 1916, but I was assured that all the documents had been saved; some had been discolored by water; all that was lost were some pictures in the Galleries.

Returning to his office, I inquired if the Senate Journal had any reference to the Act being placed before that body. We examined the Journal and another large volume which contains a Proclamation from Queen Victoria with the names of the first Senators, also an extract covering the executive activities of the Senate, without success.

"Was this Act ever placed before Parliament?" I asked.

"You will have to ask Dr. Beausnesne", was the answer.

Returning to the Commons, Dr. Beausnesne made an exhausting search of his records without finding any reference to the Act in his Journal.

"Well, Doctor, I was informed that we had no 'Certified copy' of the Act in Vancouver by the Chief Justice of British Columbia, but was assured that I would find it in Ottawa. If it were in Canada it would no doubt be in Ottawa. So I think we can assume for the purposes of my investigations that no certified copy of the British North America Act was ever brought to Canada. Is that so?"

"I am very much afraid that you are correct" was the Doctor's reply.

The First Page Was Left Out — Why?

After the Act was passed by the British Parliament, March 29th, 1867, printed copies were brought to Canada. These, however, do not contain the first page, which sets forth the enunciation of the motives and the purpose of the enactment. Why was this most important page deleted? This is a vital question and can best be settled by having a "certified" copy sent to Canada. The Provinces of Canada will then no doubt form a Confederation or Federal Union as they wished, and as set forth in the Resolutions of 1864.

No agreement was ever signed by the Provinces of Canada or their representatives to confer power on a Central Government, which is the only way a Constitution can be created. First, representatives of the Provinces

are appointed or elected to a Constituent Assembly where the agreement is drafted. This agreement after ratification by the electors, is called a Constitution.

Let us examine the difference between a Federal Union and a Colony. The definition of a Federal Union, as given by our law dictionary, and the only definition acceptable in a Court of Law, is a "Union of Sovereign States, mutually adopting a Constitution". It is not enough that they be free to unite, they must be also free to reject. This is the meaning of the word "mutually". They must also "adopt" or ratify the agreement by a plebiscite of the people for "the people under God are the origin of all just power". This was a fundamental provision of the "witagenmot", the early Parliament of the Anglo-Saxons. They had the power to depose their King. This was again enacted by the House of Commons on Jan. 4th, 1649. On Jan. 30th, 1649, Charles I lost his head. That settled the argument.

In order that all courts should define words in the same manner the Interpretation Act was passed in 1889. Section 18 paragraph (3) defines a Colony in these words:

"The expression 'Colony' shall mean any of Her Majesty's Dominions, exclusive of the British Islands and of British India; and where parts of such Dominions are under both a central legislature and local legislatures all parts under the Central legislature shall, for the purposes of this definition be deemed to be 'one Colony'".

As Canada was the only Dominion with a Central legislature and local legislatures in 1889, it is evident that in a Court of Law, Canada could not be deemed to be other than a Colony.

The Statute of Westminster, Dec. 11th, 1931, has since changed our status. Section 11 says, "Notwithstanding anything in the Interpretations Act 1889, the expression 'colony' shall not in any Act of the Parliament of the United Kingdom passed **after the commencement** of this act include a Dominion or any Province or States forming part of a Dominion". Canada was a Colony before the commencement of this Act, never a Confederation.

It is not generally known that the Native Sons of Canada, and more particularly Assembly No. 2 of Vancouver, drafted the Resolution which is the basis for the Statute of Westminster, a copy of which is in the Parliamentary Library.

Governor General Without Proper Authority

This Statute gives us a status of equality with Great Britain; they have no more right to issue "Letters Patent" to a Governor General to govern Canada, than Canada has the right to issue "Letters Patent" to a Governor General to govern Great Britain.

In 1867 the Colonial Office drafted a "CHARTER", which was enacted by the Imperial Parliament, in a Private Bill or Statute, uniting four of these Colonies into "ONE COLONY", without altering their status, of their relation to the Mother Country. Great Britain retained the Executive power or legal Sovereignty after the Union as before. In other words they remained Colonies of Great Britain, with one Governor General, instead of four, and Letters Patent granting to him the power to govern, and a Committee of His

Majesty's Most Honorable Privy Council, to administer affairs, in connection with the United Colony. As the New England Colonies were called Dominions and as Wales was a Dominion until the reign of George III, this United Colony, was called a Dominion.

In 1931 the Statute of Westminster, altered this relationship and granted to Canada the right, to self-government and in order that the Federal Union they previously requested, could be formed, granted to each Province the Sovereignty to create a Federal Union. This power was granted to them so that they could create their own Government, the same as the Commonwealth of Australia, the Union of South Africa ~~or the Irish Free State.~~

IV — HOW HAS THE B. N. A. ACT BEEN USED?

The B. N. A. Act has been used as though it were the constitution of Canada, which it is not.

It has been used to govern Canada, and it was the intention of Lord Carnarvon and the Colonial Office that it should do so, but it was not the idea or intention of the House of Lords or the Commons which enacted it. The Parliament thought it was to be a guide to the creation of a Federal Union. They knew this could only be attained by an agreement between the Provinces, so they were not particularly concerned.

As has been shown in a previous section the Provinces were united into One Colony, and Colonies can not decide on an agreement, for they are not free to sign anything. That is why, after the Act was passed, it was never returned to the Provinces for their assent.

As the Provinces would necessarily have to be free, before they could legally unite, or incorporate into a Federal Union, the Statute of Westminster provides a paragraph for this purpose. Paragraph 2 of Section 7, which is discussed in the (section), "The Statute of Westminster grants autonomy."

Although the object or *raison d'être* of the Act is to provide a guide to the creation of a Federal Union, this scope of the Act has not yet been exercised.

A Legislature of a Province may pass an Act to incorporate a locality, or district into a municipality, but the actual incorporation must be accomplished by the citizens of the locality. This was the idea the Imperial Parliament accepted when they enacted the B. N. A. Act.

By the terms of the Act the Governor General is the Government. He received his "Letters Patent" to exercise the powers of the Act from the Clerk of the Crown in Chancery, the latest "Letters Patent" were issued to Earl Bessborough and signed by Sir Claude Schuster, March 23rd, 1931, eight months prior to the enactment of the Statute of Westminster, Dec. 11th, 1931.

As Canada has been raised by Statute to the "accepted constitutional position" of equality with Great Britain, the Imperial Government could not grant further "Letters Patent".

In a cable to the Imperial authorities in October, 1935, I myself protested any "Letters Patent" being issued to Lord Tweedsmuir. He received none. Without these all-important Letters Patent the powers granted to the Governor General in the B. N. A. Act can not be legally exercised.

In the Statutes of Alberta there is an Act — "The Constitutional Questions Determination Act" which provides that any question touching the Constitu-

tion of Alberta, or where there is a conflict between the Province and the Dominion, the case may be taken to the Supreme Court and any person, or classe of persons, are entitled to be heard.

Sovereign power — is independent of all power from without — it is paramount over all action within.

Following is a synopsis of evidence presented before the Special Committee convened in 1935 to investigate the British North America Act:—

Convened at the House of Commons, Ottawa,

February 26th, 1935. F. W. Turnbull, Chairman.

Excerpts from the evidence of:—

Dr. O. D. Skelton, Under-Secretary of State for External Affairs.

Dr. Ollivier, K.C., Joint-Law Clerk, House of Commons.

Dr. W. P. Kennedy, Professor of Law, University of Toronto.

Dr. N. McL. Rogers, Professor of Political Science, Queens University.

Dr. Arthur Beauchesne, K.C., C.M.G., L.L.D., Clerk of the House of Commons.

DR. SKELTON, UNDER SECRETARY OF STATE FOR EXTERNAL AFFAIRS:

..... Now it might be said, why not trust to growth of convention or custom altogether for the necessary changes in our Constitution? (sic.) The obvious answer, I think, is that the process is too slow, and is applicable only in cases where unanimity has been reached.

..... No other country in the World looks to the Parliament of another country for the shaping of its constitution. This solution could only be supported if we believe that Canadians are the only people so incompetent that they cannot work out a solution of their constitutional problem, and so biased that they alone among the peoples of the world cannot be trusted to deal fairly with the various domestic interests concerned

It is not safe to leave the question open and ambiguous indefinitely; for at any time a dispute on a concrete issue may arise.

..... To retain permanently the intervention of the Parliament of the United Kingdom is either superfluous or dangerous.

DR. MAURICE OLLIVIER:

..... Furthermore, our Constitution (sic.) is a law adopted by the British Parliament exercising its incontestable right of sovereignty toward its Colonies This explains the fact that the British North America Act is not a reproduction of the Quebec Resolutions England was free to agree to the resolutions or to disregard them entirely.

DR. W. P. M. KENNEDY, Professor of Law, University of Toronto:

..... I think we have got to get away from the idea that the British North America Act is a "CONTRACT" or "TREATY" I do not want to go into that, but it is true neither in history nor in law. The British North America Act is a Statute and has always been interpreted as a Statute.

Suppose now we assume that it is necessary to have constituent powers in Canada powers to change the Constitution. (sic.) I approach that problem from two angles. First of all I want to break the British North America Act up. . . . We have got to ask ourselves, "Is the dead hand of the past to be constantly laid with numbing effect on the body politic". That is really what it amounts to. . . If we in Canada are not capable of interpreting our own Constitution (sic.) we should not have a Legislature at all.

PROFESSOR NORMAN McL. ROGERS, Professor of Political Science,
Queens University:

I am thoroughly convinced that the British North America Act is not a pact or contract either in the historical or legal sense.

BY MR. COWAN:

Q.—You get back to this: your start is another Interprovincial Conference?

Ans.—I am afraid it is. I see no feasible alternative.

HON. MR. LAPOINTE:

There is no doubt about it.

DR. BEAUCHESNE, K.C., C.M.G., L.L.D., Clerk of the House of Commons:

It is quite true that if we apply to the British North America Act the principles followed in the interpretation of statutes it is not a compact between Provinces; it is an Act of Parliament which does not even embody all the resolutions passed in Canada and in London prior to its passage in the British Parliament where certain clauses that had not been recommended by the Canadian Provinces were added. . . . The Statute of Westminster has altered our Status. . . What we want is a new Constitution (sic.)

The new Constitution (sic.) must leave nobody with a grievance.

A spirit of conciliation should predominate. For these reasons, the task must be intrusted to an independent body in which all the elements of the country will be represented.

I want the assembly to sit in a City in the West. It would not be necessary for a delegate to be a Member of Parliament or of a Provincial Legislature.

I would suggest that the assembly do not sit in Ottawa, in order that it may not have the appearance of being dominated, or even influenced by the Dominion power; and, as the Western Provinces are of such paramount importance in the country, I suggest the best City for the representatives to gather in would be Winnipeg.

Whether our country should be changed from a Dominion to Kingdom is also a subject which might be discussed. I would suggest that the country could be called "The Federated States of Canada".

There have been many disputes about Provincial rights since 1867 and it seems certain that when a new Constitution (sic.) is drawn up the distribution of Federal and Provincial powers will have to be modified.

I submit that appeals to the Privy Council should be dealt with by our Constitution. This method would preserve the principle of taking our cases to the highest tribunal without going out of our own country.

If you will allow me, Mr. Chairman, I will just make another suggestion; if we have a constituent assembly and if we discuss the making of a new (sic.) constitution, I think it is an anomaly that Dominion affairs, should, to a certain extent, be subject to provincial authority. I would suggest that we have a Federal district taking in about 25 square miles on each side of the Ottawa River.

I would not have any minority rights discussed. There is nothing more dangerous in Canada than a discussion of minority rights. A discussion of them would wreck the whole Constituent Assembly.

I think the time is ripe for a change in the Constitution (sic.) I do not think you would need much publicity in order to draw to the attention of the people of this country that the British North America Act is inadequate.

V — HOW DID WE GET THE STATUTE OF WESTMINSTER, 1931?

Summarizing and consolidating the results of their meetings from 1911, the Imperial Conference of 1926, composed of representatives of all of the Dominions and of Great Britain, agreed to draft a "Bill" to be presented to

Parliament which would enact a measure to put into effect the accepted constitutional position, that each of the Dominions had an equality of status with the United Kingdom.

Canada without question may be said to have taken the leading part in these conferences, and in 1926 our Prime Minister, The Rt. Hon. Wm. Lyon Mackenzie King, moved the first resolution crystalizing the findings of the previous conferences and is a synopsis of the accepted opinion and attitude of the Canadian people toward the empire and the United Kingdom. It covers all points which are incorporated in the Statute of Westminster — particularly that Canada should be elevated constitutionally to a position of equality with the United Kingdom — states the position of Canada in regard to assisted immigration and Canada's natural resources — our previously expressed attitude on Imperial Defence, that the method of appointment of the Governor-General of Canada is ripe for a radical change more in consonance with National dignity — that the channels of communication between Canada and any other country should be direct.

As this Resolution was drafted and sent to our Prime Minister, by Assembly No. (2) of the Native Sons of Canada, Vancouver, B.C., prior to his departure for the 1926 conference, the last paragraph is quoted verbatim:—

LOCARNO, WAR, NEUTRALITY, etc. This Assembly is convinced that so long as the present anomalies of Canada's status continue, the advantages to Canada from participation in Imperial Conferences are largely negative.

The Conference is built on a Constitutional fiction — that all the representatives meet as equals. The test — What is Canada Constitutionally? — is the true test. And until Canada, either by her own act, or by Imperial concession, attains Sovereignty as an independent Nation under the Crown; with international recognition, her position in respect to Britain's wars, neutrality, and her international relationships in general, will remain clouded and obscure. That position will be and remain, both constitutionally and internationally, that of a colonial status. Mere rhetoric cannot overcome this inescapable fact."

This Resolution which was the key-note of the conference was seconded by Prime Minister Hertzog of South Africa.

A copy of this Resolution with an affidavit signed by the Custodian of the Records of the Native Sons of Canada, D. H. Elliot, stating that the Resolution was presented to the Assembly by Brother R. Rogers Smith is in the Parliamentary library at Ottawa.

In the Imperial Conference of 1929 the sections of the Act were condensed into paragraphs to comply with Parliamentary practice and procedure. In 1930, Prime Minister R. B. Bennett called a conference of the Premiers of the Provinces when Paragraph 1 of Section 7 was added. Why this section was included is puzzling. It reads:— "Nothing in this Act shall be deemed to apply to the repeal, alteration or amendment of the B. N. A. Act 1867 to 1930 or any order, rule or regulation made thereunder." As the B. N. A. Act can only be construed as a "guide to the creation of a Federal Union", and as this was the enunciation of the motive which prompted the Imperial Parliament to enact it, and as it will most certainly be scrapped when a Federal Union is consummated, why was section 7, paragraph 1 added? It does not alter the meaning of the Statute of Westminster one iota. It seems to indicate a lack of knowledge of the British North America Act, which is not surprising as they had no certified copy to consult or examine.

VI — THE STATUTE OF WESTMINSTER GRANTS AUTONOMY

As Dr. Beauchesne states in his evidence "The Statute of Westminster has altered our status". **Section 11 states that after the commencement of the Act no Dominion or nor Province or State forming part of a Dominion shall be considered to be a Colony.** It is acknowledged that the status of Canada before the commencement of the Act was that of a Colony, and it may be said in this connection that until the Provinces of Canada had been elevated to a position of autonomy, they had no voice in stating how they should be governed. The Statute of Westminster "altered our status" by granting complete autonomy to the Provinces.

To state that because the Provinces of Canada have used the B. N. A. Act for seventy years, or because of the Statute of Limitations, or for the reason that the Act has been accepted as the corner-stone of Canadian Law and Legislation, that the B. N. A. Act is a constitution, is not correct reasoning.

First, because the Provinces of Canada do not use the B. N. A. Act as a whole. It is an instrument for the exercise of the powers of the Governor General. It was not accepted by the Provinces at any time since its enactment, but has been protested by them on many occasions.

We may use the Act as a guide to the creation of a constitution, or the basis of an agreement between the Provinces, as this was the object or intention of the Parliament which enacted it; or we may disregard it entirely if we choose.

Why? Because the Provinces of Canada are completely autonomous today. Each Province is a political unit, without a political superior, by law

Although the Statute affects other Dominions as well as Canada (that is to say, the Commonwealth of Australia, the Union of South Africa, New Zealand, the Irish Free State and Newfoundland) it also extends autonomy to each individual Province of Canada.

Paragraph 2 of Section 7 states that the provisions of Section 2 of this Act shall extend to laws made by any of the **Provinces of Canada** and to the powers of the legislatures of such Provinces.

The provisions of Section 2 are those which grant autonomy. Autonomy is not divisible; either you have it, or you have not.

Why are these autonomous powers not granted to the States of Australia individually or to the States of South Africa? Because these States had created their constitutions before the commencement of the Statute of Westminster.

Granting Autonomy to Canada as a whole was not sufficient, in the opinion of the Imperial Parliament which enacted the Statute, for they knew it would be necessary for the Provinces to grant their power to a Central Government, and this could only be done when they were free. (This is further discussed in the section "The Federated States of Canada".)

Provincial autonomy only granted to Canadian Provinces

Although Canada and, more particularly, British Columbia, took the lead in placing before the Imperial Conference the reasons for the enactment of the Statute of Westminster, Canada has not taken advantage of its provisions.

The other Dominions affected have taken advantage of this measure, and although remaining within the Empire, have their own Constitutions. The Irish Free State has no Governor General, the Premier now acts as the representative of His Majesty. South Africa is no longer "tied to the apron strings of grandma" (Hertzog.)

A Parliament of a Dominion is not a Central Legislature of a Colony, and no alteration of its Charter can make it so. Section 3 and 4 of the Statute of Westminster do not refer to the Central Legislature at Ottawa. This can only be construed as it states, and a Parliament representing the Provinces of Canada, must be one whose charter is granted by an agreement between the Provinces, or in other words is created by them.

VII — NEXT STEP - "THE FEDERATED STATES OF CANADA"

It is true that the Federated States of Canada would not be dependent in any way on the Imperial Parliament for their government. Why should Canada be dependent?

Are the States of Australia, South Africa or the Irish Free State, less a part of the Empire because they constructed Constitutions and are free to govern themselves?

The story of Confederation is a myth, and those that think that Sir John A. Macdonald was the "Father of Confederation" know little about this question. In a letter to Lord Knutsford, Secy. of State for the Colonies, at the time the first meetings were held between the States of Australia regarding a Federal Union in 1888; Sir John expresses his regret for the defeat of 1867 in the following words "If the Statute (the B.N.A. Act) had only followed the Canadian draft of the bill, Australia ere this would have a government similar to the Kingdom of Canada".

Before this, and because Sir John knew the inside story of the "Fenian raids" of 1866, and the hair-trigger relationship between Great Britain and the United States of America, he reluctantly accepted appointment as one of the British representatives in the negotiations to agree on the terms of the Treaty of Washington, and from beginning to end of the negotiations he found it necessary to fight against the sacrifice of Canadian rights. This is seen clearly in the following extract from a letter he wrote at the time to Dr. Tupper:—

"I must say that I am greatly disappointed at the course taken by the British Commissioners. They seem to have only one thing on their minds — that is, to go home with a Treaty in their pockets, settling everything, no matter at what cost to Canada . . . The effect which must be produced on the public mind in Canada by a declaration

from both parties in the Imperial Parliament against our course, will greatly prejudice the idea of British connection, as British connection will have proved itself a farce. I do not like to look at the consequences, but we are so clearly in the right, that we must throw the responsibility on England."

Is this the "Father of Confederation" speaking?

If no ulterior motive was served, why were the stories of Confederation circulated?

All that can be said is that the gullibility of Canadians was deplorable.

No member of the Dominion Government today would seriously contend that he knows anything about the British North America Act, for they know there is no certified copy in Canada, and anything less than an examination of a certified copy can only be classed as assumption. There is a vast difference between assumption, belief, and the ability to produce factual evidence.

The next step is an interprovincial conference, where an agreement can be reached upon the powers to be conferred on the Central Government, and the powers which must be retained by the Provinces.

Federation

First of all power must be conferred upon appointed representatives of the Provinces, so as to carry on the Government of Canada and with the power to call an election, as soon as possible, after the Constitution has been ratified by the people of each and all the Provinces.

*The Independence Papers. Vol. 2 John S. Ewart.
page 558 K.C.L.L.O.*
*The declaration of The Imperial Conference of
equality of Status between Canada and the United
Kingdom in both domestic and external affairs is no
new. In fact, each of the Kingdoms is a sovereign,
independent state. As a matter of law, the final
step has still to be taken - the creation by the
Canadian people of a Canadian Con-
stitution.*
*signed J. S. Ewart Ottawa, Jan
above statement confirms need of
NOTE new constitution. 1932*

On the opposite page is set forth the exact wording of the first page of the B.N.A. Act, containing the Preamble of the Act, which has not been published in the official copies of the Statutes either in Great Britain or in Canada.

1867

1867

BRITISH NORTH AMERICA ACT

Enacted by

Her Most Gracious Majesty
QUEEN VICTORIA

and

THE IMPERIAL PARLIAMENT



BY REASON OF THE REQUEST OF THE COLONIES

for

FEDERAL GOVERNMENT

IT IS EXPEDIENT THEREFORE THAT THEY HAVE
LAWS AND REGULATIONS TO GUIDE THEM.

